

Judge: Christopher M. Alston
Chapter: 7
Hearing Location: Seattle
Hearing Date: February 6, 2020
Hearing Time: 1:30 p.m.
Response Date: January 30, 2020

**UNITED STATES BANKRUPTCY COURT
WESTERN DISTRICT OF WASHINGTON AT SEATTLE**

IN RE

JASON L. WOEHLE, DEBTOR.

RUSSELL BRANDT, Plaintiff

v.

JASON L. WOEHLE, Defendant.

Bankruptcy No. 18-12299-CMA

Adversary No. 18-01169-CMA

**PLAINTIFF'S REPLY TO DEBTOR'S
OPPOSITION TO PLAINTIFF'S
MOTION FOR SUMMARY
JUDGMENT**

I. INTRODUCTION

COMES NOW Plaintiff, RUSSELL BRANDT, ("Plaintiff") by and through counsel, and respectfully files this Reply to Debtor's Opposition to Plaintiff's Motion for Summary Judgment. Plaintiff incorporates by reference Plaintiff's Opposition to Debtor's Motion for Partial Summary Judgment, which fully addresses Plaintiff's claim under 11 U.S.C. §523(a)(6).

Debtor's response to Plaintiff's Motion For Summary Judgment does not contest that he made misrepresentations in his schedules, instead it is "whether misstatements in the schedules and statements are sufficient to deny [Debtor] a discharge under 11 U.S.C. §727(a)(4)." (Dkt. No. 18 at 2). Debtor also does not deny failing to follow the Court's orders, but instead seeks to minimize his failure to follow the Court's order and mischaracterizes the ways in which he

PLAINTIFF'S REPLY
18-01169-CMA - 1

Leonard Law
1001 4th Ave, Suite 3200
Seattle, WA 98154
Ph. (206) 486-1176 Fax (206) 458-6028

1 disobeyed the Court's order. Debtor's defense is consistent with his pattern of producing
2 explanations after he is called out for his misrepresentations.

3 Debtor is not a good faith debtor entitled to discharge under 11 U.S.C. §727. Debtor's new
4 assertions in his Opposition to Plaintiff's §727 motion reveal Debtor's standard operating
5 procedure is to act willfully in spite of knowledge of the consequences, a posture that he attempts
6 to minimize as "Hobson's choice[s]" and "miscommunications and glitches." (Dkt. 18-1, p. 3-5.)
7 His Opposition brief actually solidifies Plaintiff's claim under §523(a)(6) and does not create a
8 material issue of fact that defeats a summary judgment finding of nondischargeability.
9

10 II. FACTS

11 Plaintiff incorporates by reference all relevant material facts regarding Mr. Brandt's claim
12 of nondischargeability previously adjudicated in *Brandt v. Columbia Credit Servs.*, Case No. 2:17-
13 cv-703-RSM (hereinafter "Collection Abuse Matter"), Plaintiff's Motion for Summary Judgment
14 (Dkt. 15) and Exhibits (Dkt. 16) and Plaintiff's Opposition to Debtor's Motion for Partial
15 Summary Judgment (Dkt. 17). In the interest of brevity and judicial economy, these facts will not
16 be repeated here.

17 In his response, Debtor admits that he did not comply with a Court order and appear at a
18 341 hearing. (Dkt. 18 at 2). He claims that his failure to appear at his 341 hearing as ordered by
19 the Court was a scheduling error. (Dkt. 18 at 2). He claims he does not know when he is going to
20 be *in trial*. (Dkt. 18-1, p. 3, ¶7). His explanation fails to address his failure to provide
21 "documentation of *all* sources of [his] income" as ordered by the Court. (*See* Dkt. 39 at 1 in original
22 action (emphasis in the original)). Debtor also claims to have not known the balance in his Wells
23 Fargo bank account. (Dkt. 18-2, p. 2.) He does not explain why or how he could not simply look
24 up this information (Dkt. 18-1, p. 5, ¶12). It is the Debtor's responsibility to disclose assets and
25 ensure that those assets that are disclosed are accurate and his failure to disclose \$35,000 in assets
26

27 PLAINTIFF'S REPLY
18-01169-CMA - 2

Leonard Law
1001 4th Ave, Suite 3200
Seattle, WA 98154
Ph. (206) 486-1176 Fax (206) 458-6028

1 is material. Debtor admits failing to include “sporadic” income from Fiduciary Services
2 Foundation, “occasional small fees from former clients” and a “small monthly auto reimbursement
3 from Merchants Credit.” (Dkt. 18-1, p. 3.) Debtor then admits that he engages in fee splitting with
4 his collection agency client FAI on his WSU accounts: “FAI recovers any attorney’s fees, those
5 fees are not paid to me.” (Dkt. 18-1, p. 4, ¶10.) Fee splitting is prohibited under Wash. RPC 5.4.¹
6

7 He also admits that he initially filed for Chapter 13 to stay Plaintiff’s case in District Court,
8 and claims it was also to “make structured payments over time of the expected
9 judgment...and...other debts” (Dkt. 18-1, p. 1, ¶1). He claims that following Mr. Brandt’s
10 judgment, it “became apparent that [his] income was not enough to pay all creditors” (Dkt. 18-1,
11 p. 2, ¶3). Only after then, and following many irregularities in this bankruptcy, did Debtor locate
12 a friend who was able to loan him money to repurchase the non-exempt equity in his house,
13 suggesting that all along he could have satisfied his creditors short of filing bankruptcy. (Dkt. 18-
14 1, p. 6, ¶14.)

15 **III. AUTHORITY**

16 **A. Summary Judgment Standard.**

17 A Court shall grant summary judgment “if the pleadings, the discovery and disclosure
18 materials on file, and any affidavits show that there is no genuine issue as to any material fact and
19 that the movant is entitled to judgment as a matter of law.” Civil Rule 56(c)(2), as incorporated by
20 Rule 7056; *Barboza v. New Form, Inc. (In re Barboza)*, 545 F.3d 702, 707 (9th Cir. 2008).
21 Summary judgment is appropriate where the movant shows that there is no genuine dispute as to
22 any material fact and the movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(c);
23 *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 247, 106 S. Ct. 2505, 91 L. Ed. 2d 202 (1986). A
24

25
26 ¹ Fee splitting is barred under Washington Rule of Professional Responsibility 5.4. The comment to Wash. RPC
5.4 explains rules barring fee splitting “are to protect the lawyer’s professional independence of judgment.”

1 court, on a motion for summary judgment, should view all the evidence and draw all inferences in
2 the light most favorable to the non-moving party. *Anderson*, 477 U.S. at 255; *Sullivan v. U.S.*
3 *Dep't of the Navy*, 365 F.3d 827, 832 (9th Cir. 2004).

4 Once the moving party properly supports its motion for summary judgment, the non-
5 moving party must establish a genuine issue of material fact in order to preclude a grant of
6 summary judgment. *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586 (1986).
7 “The mere existence of some alleged factual dispute between the parties will not defeat an
8 otherwise properly supported motion for summary judgment.” *Anderson v. Liberty Lobby, Inc.*,
9 477 U.S. 242, 247- 248 (1986). In addition, “a complete failure of proof concerning an essential
10 element of the non-moving party’s case necessarily renders all other facts immaterial.” *Celotex*,
11 477 U.S. at 323. The substantive law upon which each claim rests determines the facts that are
12 “material.” *Anderson*, 477 U.S. at 248.

13
14 **B. Section 727: Debtor’s Deception.**

15 Denial of a discharge is appropriate under section 727(a)(4)(A) if the plaintiff shows by a
16 preponderance of the evidence that “(1) the debtor made a false oath in connection with the case;
17 (2) the oath related to a material fact; (3) the oath was made knowingly; and (4) the oath was made
18 fraudulently.” *In re Roberts*, 331 B.R. 876, 882 (9th Cir. BAP 2005). A single false oath involving
19 a material false statement or omission in a debtor's schedules is all that is required for denial of
20 discharge, if it detrimentally affects administration of the estate. *In re Kahle*, No. 11-61359-13,
21 2013 Bankr. LEXIS 515, at *28-29 n.13 (Bankr. D. Mont. Feb. 8, 2013) (citing *Fogal Legware of*
22 *Switzerland, Inc. v. Wills (In re Wills)*, 243 B.R. 58, 62 (9th Cir. BAP 1999); *In re Wright*, 364
23 B.R. 51, 57 (Bankr. D. Mont. 2007)).

24 A “false oath” can be a false statement or omission in the debtor’s schedules. *Fogal*, 243
25 B.R. at 62. A false oath can also be a false statement under oath at a meeting of creditors. *See Cork*
26

1 v. *Gun Bo, LLC (In re Cork)*, 566 B.R. 237, 253 (D. Ariz. 2017). Debtor made numerous false
2 oaths in his schedules and at his multiple meeting of creditors.

3 IV. ARGUMENT

4 **A. Debtor Is Not Entitled to a Discharge Pursuant to §727.**

5 Debtor admits he has made misstatements regarding his income and assets. The UST's
6 audit found that Debtor made "one or more material misstatements," and Debtor did not dispute
7 the UST's characterization. Debtor has failed to supply plausible explanations for all of his
8 misrepresentations in his schedules, and has thus failed to create a triable issue of material fact on
9 Plaintiff's §727 claim. Just one material false statement is all that is needed. Despite Debtor and
10 his counsel offering explanations for *some* of the omissions and inconsistencies in the schedules
11 and reasons for failing to follow the Court's order, the fact remains that certain misrepresentations
12 and his failure to abide the Court's orders have no plausible explanation whatsoever:

14 (1) Debtor failed to appear at his 341 hearing as Ordered, he failed to provide the trustees
15 with all the records he was required to produced at his multiple 341 hearings, he failed to make
16 plan payments as ordered and has shown a shocking disregard for this Court authority. (*See* Dkt.
17 52 in original action). There is no excuse given as to why the Debtor, who has substantial income,
18 did not make his plan payment as ordered by the Court. (*See* Dkt. 39, original action). There is no
19 excuse for Debtor's failure to appear at his originally scheduled 341 with all of the required
20 documentation, or at his continued 341s with all required documents.

22 (2) It is wholly implausible for a Debtor who is an attorney to not know, and not have
23 readily available, the balance in his bank account, or remember approximately when he was last
24 paid by his own clients. (Dkt. 18-1, p. 2, ¶4.) Debtor pays short shrift to a \$35,000 oversight that
25 is material.

1 (3) Debtor wholly fails to address the finding of the UST's audit which found he made
2 numerous material misstatements of income and assets. (Dkt. 80, Original Action)

3 (4) It is equally implausible for Debtor, an attorney who practices in the area of debtor-
4 creditor law, to "overlook" three different sources of income, Fiduciary Services Foundation, fees
5 from clients, and an automobile reimbursement that might seem minor to Debtor, but add up over
6 time. (Dkt. 18-1, p. 3, ¶6.)

7 (5) Debtor has not explained the disarray in his house or otherwise responded to Plaintiff's
8 assertion that he was interfering with the sale of the home in bad faith. (Dkt. 18-1, p. 5, ¶12; Ex.
9 A, Declaration of Rik Jones describing disarray and other issues he observed.)

10 Debtor expects the Court to somehow hold Debtor to a more lenient standard under §727
11 simply because he is a busy attorney working for three different collection agencies, has a high
12 volume of cases, is frequently on the road, and forgets to bring his calendar. (Dkt. 18-1, p. 3, ¶7.)
13 A lawyer, however, is not too busy to know how much money he has and where it comes from.
14 He simply cannot plausibly state that he did not know these amounts and facts, and has admitted
15 he filed the Chapter 13 to delay Plaintiff's obtaining a judgment against him. Debtor has only
16 "remembered" certain resources when caught in the misrepresentation. Debtor came to this Court
17 fraudulently, and his thin excuses do not defeat Plaintiff's otherwise supported motion for
18 summary judgment.
19

20 An attorney and officer of the Court should not violate a Court order in multiple ways and
21 fail to provide documents necessary for his 341 hearing, on multiple occasions. Debtor cannot
22 plausibly state that he is more unaware of his income and assets than the average debtor; a lawyer
23 can reasonably be expected to be more accurate the first time with his schedules. The fact that
24 Debtor did not, and has no plausible explanations for why he forgot to accurately disclose or
25 disclose at all key pieces of income and assets, makes Plaintiff's success on the §727 claim
26

27 PLAINTIFF'S REPLY
18-01169-CMA - 6

Leonard Law
1001 4th Ave, Suite 3200
Seattle, WA 98154

Ph. (206) 486-1176 Fax (206) 458-6028

1 inevitable. Debtor's declaration that he "did not intentionally disregard" and has been "truthful to
2 the best of [his] ability" does not defeat Plaintiff's otherwise supported motion for summary
3 judgment, and this Court should grant it.

4 V. CONCLUSION

5 For the reasons detailed herein, Plaintiff requests that the Court grant Plaintiff's motion.
6 Mr. Brandt requests an award of attorneys' fees incurred in this action and leave to file a motion
7 for fees should the Court grant Plaintiff's request.

8 DATED this 3rd day of February, 2020.

9
10 S//Samuel Leonard
11 SAMUEL LEONARD (WSBA #46498)
12 Leonard Law
13 1001 4th Ave. #3200, Seattle, WA 98154
14 Ph. 206.486.1176
15 Fx. 206.458.6028
16 sam@seattledebtdefense.com

17 S//SaraEllen Hutchison
18 SARAELLEN HUTCHISON (WSBA #36137)
19 Law Office of SaraEllen Hutchison, PLLC
20 539 Broadway, Tacoma, WA 98402
21 Telephone: (206) 529-5195
22 Facsimile: (253) 302-8486
23 Email: saraellen@saraellenhutchison.com

24 *Attorneys for Creditor Russell Brandt*

25 CERTIFICATE OF SERVICE

26 I hereby certify under penalty of perjury under the laws of the State of Washington that on
27 the 3rd day of February 2020, I electronically filed the foregoing with the Clerk of Court using
the CM/ECF system which will automatically serve and send email notification of such filing to
all registered attorneys of record.

PLAINTIFF'S REPLY
18-01169-CMA - 7

Leonard Law
1001 4th Ave, Suite 3200
Seattle, WA 98154
Ph. (206) 486-1176 Fax (206) 458-6028

1 Dated this 3rd day of February, 2020 at Tacoma, Washington.

2 S//SaraEllen Hutchison
3 SARAELLEN HUTCHISON (WSBA #36137)
4 Law Office of SaraEllen Hutchison, PLLC
5 539 Broadway, Tacoma, WA 98402
6 Telephone: (206) 529-5195
7 Facsimile: (253) 302-8486
8 Email: saraellen@saraellenhutchison.com

9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25
26
27 Counsel for Plaintiff/Creditor Russell Brandt

PLAINTIFF'S REPLY
18-01169-CMA - 8

Leonard Law
1001 4th Ave, Suite 3200
Seattle, WA 98154

Ph. (206) 486-1176 Fax (206) 458-6028